

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ZINO DAVIDOFF SA,

Plaintiff,

v.

06 Civ. 15332 (KMK)

CVS CORPORATION,

Defendant.

**SUPPLEMENTAL DECLARATION OF JAMES DUGGAN IN SUPPORT OF
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

I, James Duggan, hereby declare as follows:

1. I am Vice President of Risk Management, Security and Corporate Services at Coty Inc., 2 Park Avenue, New York, New York 10016. Coty Inc. is the indirect owner of Lancaster BV, which is the exclusive fragrance licensee of Plaintiff Zino Davidoff SA ("Zino Davidoff"). Coty Inc. also owns Coty Prestige US LLC, which is the authorized U.S. distributor of DAVIDOFF fragrance products (Coty Inc., Lancaster BV and Coty Prestige US LLC collectively referred to as "Lancaster").

2. My duties include developing and implementing anti-counterfeiting measures and interfacing with various government agencies, including U.S. Customs and Border Protection, regarding our anti-counterfeiting strategy. I submit this supplemental declaration, based upon my own personal knowledge and my review of the documents annexed hereto, in support of the motion of Zino Davidoff for a preliminary injunction and as a supplement to a declaration dated February 2, 2007 that I previously submitted in this action.

**Use Of The Production Code System Is A Key Part Of The
Anti-Counterfeiting Strategy Of Zino Davidoff And Lancaster**

3. As the Vice President of Risk Management, Security and Corporate Services, I am intimately involved in our war against counterfeit fragrance products. Among the areas of our anti-counterfeiting strategy that I focus on is acting as a liaison with U.S. Customs and Border Protection (“CBP”), law enforcement officers and our own private investigators.

4. CBP, a division of the U.S. Department of Homeland Security, is responsible for inspection and enforcement at the U.S. borders to prevent harmful or illegal materials or persons from entering the country. CBP officers are an integral part of any anti-counterfeiting program because they have the opportunity and ability to stop counterfeit goods before they enter the U.S. CBP officers are therefore a brand owners’ frontline of defense.

5. Zino Davidoff has recorded its trademark registration with CBP. I frequently participate in CBP training sessions on behalf of Lancaster, Zino Davidoff and other brand owners with whom we have fragrance licenses. I do so because CBP officers face a very difficult task as limited resources permit CBP to inspect only a small percentage of the containers of goods that enter the U.S. each year. Annexed hereto as Exhibit 1 is a true and correct copy of a 2006 CBP Fact Sheet published at the website www.cbp.gov/xp/cgov/newsroom/fact_sheets, which states that, among its other duties, CBP processed 70,900 truck, rail and sea containers and approved 85,300 shipments of goods for entry on “a typical day in fiscal 2006.” (emphasis supplied). With respect to counterfeit fragrance products, a single container of fragrance goods coming into the U.S. can contain products from many different brand owners, thereby requiring CBP officers to know how to authenticate scores of different products. Complicating matters is the fact that a favorite strategy

of counterfeiters is to mix genuine, counterfeit and/or decoded gray market fragrance products in a single shipping carton.

6. Because of the importance of our coding system, we always specifically train CBP officers on our Production Code system and the ways they can use the Production Code to detect counterfeits of our fragrance products, such as looking for DAVIDOFF product either without the Production Code or with an identical Production Code on multiple units. In fact, at every training session we hand out our Product Identification Manual, which goes into great detail regarding the Production Code system. Annexed hereto as Exhibit 2 is a true and correct copy of our Product Identification Manual (to be submitted under seal). In addition, we provide CBP officers with the name and telephone number of Zino Davidoff's and Lancaster's U.S. counsel, whom they can contact if they discover possible counterfeits of our fragrance products.

7. We have seen our CBP training efforts result in a number of anti-counterfeiting successes. By way of example, the CBP Port Director for the Detroit Metropolitan Airport contacted us in or around January 2005 to report that CBP had discovered and detained approximately seventy-one (71) units of suspected counterfeit DAVIDOFF COOL WATER product. After inspecting samples of the detained DAVIDOFF COOL WATER product provided to us by CBP, we determined through the use of the Production Code system, visual analysis and laboratory testing that the samples were indeed counterfeits. In fact, our Production Code system allowed us to determine that some of the detained samples were marked with the same bogus Production Code we had previously encountered on counterfeit DAVIDOFF products in Poland. After relaying our determination to CBP, the agency seized the counterfeit DAVIDOFF COOL WATER units. Annexed hereto as Exhibit 3 is a true and correct copy of the Notice of Seizure dated April 20, 2005 from Betty Geymann to Robert A. Becker, Esq. As

some of these counterfeit products had a different chemical make-up than genuine DAVIDOFF COOL WATER, the seizure prevented a potential public health and safety risk.

8. The Notice of Seizure we received from CBP identified the exporter of the counterfeit DAVIDOFF COOL WATER products as the Tescra Group located in Beirut, Lebanon, and the importer as A&H Pictures located in Dearborn, Michigan. After learning the names of the exporter and importer, we went on to conduct investigations of each. This seizure kept counterfeit DAVIDOFF COOL WATER products out of the stream of commerce, and also allowed us to continue to build our knowledge base regarding fragrance counterfeiters and the distributors of those goods.

9. We periodically provide CBP officers with information on any new developments regarding counterfeits of our goods. When disseminating this information we always emphasize our unique Production Code system because it is a quick and easy way to determine authenticity. For example, after DAVIDOFF COOL WATER products were seized at the Detroit Metropolitan Airport in April 2005, I contacted the Intellectual Property Rights Branch of CBP to provide the facts of the Detroit seizure as well as other counterfeit activity we were investigating at that time. I provided CBP with pictures of the counterfeit DAVIDOFF COOL WATER products seized in Detroit and included detailed explanations of why the products were counterfeit. As part of the explanation, I provided information on our Production Code system, and how we used it in the Detroit seizure to determine that DAVIDOFF COOL WATER products at issue were counterfeits.

10. We also provide information and training on the Production Code system to our own private investigators. This allows our investigators when they are in the field to make instantaneous determinations as to whether DAVIDOFF products are counterfeit.

11. Without the Production Code system, we would be forced to rely upon laboratory testing and detailed visual inspections of each unit. While both procedures are effective and part of our anti-counterfeiting strategy, they are time-consuming and expensive ways to detect counterfeit products, and we cannot expect CBP officers, law enforcement personnel, our private investigators and other third parties to authenticate our products through such procedures.

12. In my experience, the Production Code system has greatly enhanced the ability of CBP officers and our investigators to detect counterfeit DAVIDOFF fragrance products, and thus dramatically increase the overall effectiveness of our anti-counterfeiting program.

CVS's Warehouses Contained Many Visibly Mutilated Decoded Gray Market DAVIDOFF Products

13. As I stated in my original declaration, I am familiar with the characteristics that differentiate genuine products authorized for sale in the United States from decoded gray market products. I am also familiar with the many ways in which people remove the Production Code from our fragrance products.

14. I participated in the initial inspection of DAVIDOFF COOL WATER products at two CVS Corporation ("CVS") warehouses, Woonsocket, Rhode Island and Lumberton, New Jersey, and I was present at the inspection conducted at CVS's warehouses in Vero Beach, Florida and Orlando, Florida.

15. Many of the decoded gray market DAVIDOFF COOL WATER products that I observed and inspected at these four warehouses possessed clearly visible mutilated elements directly resulting from the decoding. The people who decoded these products did so in a number of ways, including but not limited to:

- a. crudely cutting portions of the bottom of the box to remove the Production Code;

- b. placing stickers over the cut portions of the bottom of the box, which often failed to fully cover the cuts in the box or were placed in a haphazard manner;
- c. crudely cutting portions of the label on the bottoms of the bottles to remove the Production Code;
- d. wiping the labels on the bottoms of the bottles with a chemical to remove the Production Code, which sometimes left a smear of ink on the label; and
- e. grinding away the bottoms of the bottles to remove the Production Code.

16. On many of the decoded gray market DAVIDOFF COOL WATER products, even where the mutilation was less visible, it was also apparent that someone had previously opened the box.

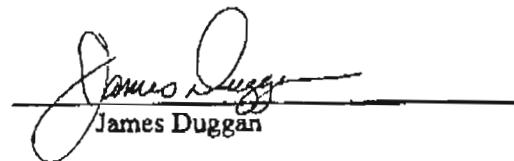
17. During these inspections, I also discovered cartons that contained counterfeit and decoded gray market DAVIDOFF COOL WATER products mixed together. Annexed hereto as Exhibit 4 are true and correct copies of photographs taken of products found in these mixed cartons.

18. As I stated above in Paragraph 5, mixing genuine, counterfeit and/or decoded gray market fragrance products in a single shipping carton is a favorite strategy of distributors of counterfeits. We have found counterfeit DAVIDOFF COOL WATER products that have no production code. Such counterfeits are virtually indistinguishable to the eye from decoded gray market products, as illustrated by the photographs annexed as Exhibit 5. Further, counterfeit product bearing a bogus Production Code could be decoded at any point in the distribution chain.

19. The distribution and sale of decoded DAVIDOFF products therefore undermines our entire anti-counterfeiting program for the brand.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: New York, New York
April 6, 2007



James Duggan